2483.

SUPREME COURT OF THE UNITED STATES.

No. 163.

THE UNITED STATES, PLAINTIFFS,

vs.

THE CITY BANK OF COLUMBUS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

At a circuit court of the United States within and for the seventh circuit and southern district of Ohio, began and held at the court-room in the city of Cincinnati, on the third Tuesday in the month of October, the same being the sixteenth day of said month, in the year of our Lord one thousand eight hundred and fifty-five, and in the eightieth year of the independence of the United States of America, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of said court, among other, the following proceedings were had, to wit:

Action of assumpsit pending in the circuit court of the United States for the seventh circuit and southern district of Ohio.

THE UNITED STATES
vs.
THE CITY BANK OF COLUMBUS, Ohio.

Be it remembered, that on the trial of the issue of non-assumpsit to the jury at the present October term, A. D. 1855, of said court, the plaintiff relied upon a contract with the bank, founded on the following papers.

1. The following letter, written by the cashier of the defendant:

"CITY BANK OF COLUMBUS,
Columbus, Ohio, 26 October, 1850.

"Hon. THOMAS CORWIN,
Secretary of the Treasury, Washington city.

"SIR: The bearer, Col. William Miner, a director of this bank, is authorized, on behalf of this institution, to make proposals for the purchase of U. S. stocks to the amount of one hundred thousand

dollars. Any arrangement he may make will be recognised and fully carried out by this bank. He is also authorized, if consistent with the rules of the Treasury Department, to contract on behalf of this institution for the transfer of money from the east to the south or west for the Government.

"I have the honor to be, sir, your ob't servant,

THOS. MOODIE, *Cashier.*"

2. The following contract:

"W. CITY, 1*st Nov'r*, 1850.

"This will certify that I have contracted with the U. S. Treasury, as the agent of the City Bank of Columbus, to transfer $100,000 from New York to New Orleans, to be deposited in the treasury at the latter named city by the first day of January, 1851, free of charge. I have, in pursuance of said contract, this day received a draft in my own name for $100,000 on the U. S. Treasury at New York city, which is to be accounted for on said contract.

WM. MINER."

Upon the production of these papers and proof of their execution, and further proof that said letter was the act of said cashier alone, without the knowledge or sanction of the directory of said bank, before, at the time of, or subsequent thereto, but was copied in the letter-book of the bank at the time of its execution, a question arose as to the validity thereof, upon which question the judges of this court were divided in opinion. It is, therefore, by the request of both the parties, hereby ordered, that the said question be certified to the Supreme Court of the United States; that is to say, "Do said papers so made constitute a valid contract between the parties to this suit?" It was agreed that the defendant is an independent bank under the act of the general assembly of the State of Ohio of 1844–'5, to incorporate the State Bank of Ohio and other banking companies.

Wednesday, November 28, 1855.

(Signed) JOHN McLEAN, [SEAL.]
H. H. LEAVITT, [SEAL.]

THE UNITED STATES OF AMERICA,
Southern district of Ohio, ss:

I, William Miner, clerk of the circuit court of the United States, seventh circuit and southern district of Ohio, hereby certify, that the foregoing is truly taken and copied from the journal of the proceedings of said court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this 10th day of December, A. [SEAL.] D. 1855, and in the 80th year of the independence of the United States of America.

WM. MINER, *Clerk.*

UNITED STATES,
State of Ohio, ss:

In the United States circuit court for the State of Ohio—Spring term, 1853.

The United States of America, the plaintiff in this suit, complains of the City Bank of Columbus, an incorporated company doing business in the State of Ohio, under and by virtue of a charter granted by the State of Ohio, defendant, &c., of a plea of assumpsit: For that, whereas, heretofore, to wit, on the 1st day of November, 1850, at Washington city in the District of Columbia, to wit, at the State of Ohio, the said City Bank of Columbus contracted with the plaintiff to transfer the sum of one hundred thousand dollars, moneys of said plaintiff, from New York to New Orleans, to be deposited in the treasury of the United States at New Orleans by the first day of January, 1851; and the said defendant, then and there, received from the said plaintiff the said sum of one hundred thousand dollars; and in consideration thereof the said defendant, then and there, undertook and promised said plaintiff to transfer and deliver the said sum of money to the treasury of the said plaintiff in New Orleans by the first day of January, 1851, free of charge; nevertheless, the said defendant did not transfer the said sum of money from New York to New Orleans by the first day of January, 1851, nor at any other time; but, on the contrary thereof, the said defendant converted the said sum of money to her own use; by means whereof the said defendant became liable to pay the said plaintiff the said sum of money when she should be thereunto afterwards requested.

And also, for that, whereas, the said defendant heretofore, to wit, on the first day of January, 1851, at the said State of Ohio, was indebted to the said plaintiff in the sum of one hundred and fifty thousand dollars for so much money before that time had and received by the said defendant, to and for the use of the said plaintiff, and at the said defendant's special instance and request; and being so indebted, the said defendant, in consideration thereof, then and there, undertook and promised the said plaintiff to pay the said sum of money, whenever she should be thereunto afterwards requested; nevertheless, the said defendant, although often requested so to do, has not paid the said plaintiff the said several sums of money in said first and second counts specified, or any part thereof; but to pay the same and every part thereof the said defendant has hitherto wholly failed and refused, and the same and every part thereof remains wholly due and unpaid, to the damage of said plaintiff of two hundred thousand dollars; hence this suit is brought.

MASON, EWING, SMITH, & CORWINE,
Att'ys for pltff.

THE UNITED STATES OF AMERICA,
Southern district of Ohio, ss:

I, William Miner, clerk of the circuit court of the United States, seventh circuit and southern district of Ohio, hereby certify, that the foregoing is a true copy of the declaration in the case of the United States against the City Bank of Columbus, as the same remains on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 31st day of December, A. D. 1855, [SEAL.] and in the 80th year of the independence of the United States of America.

WM. MINER, *Clerk.*

U. S. C. COURT,
District of Ohio.

THE CITY BANK OF COLUMBUS
ads.
THE UNITED STATES OF AMERICA.

And the said City Bank of Columbus, defendant, comes and defends, &c., and says that said defendant did not assume and promise in manner and form as said plaintiff hath declared against said defendant, and of this said defendant puts itself upon the country, and the said plaintiff doth the like.

By H. STANBERY, & SWAN, & ANDREWS,
Att'ys for deft.

THE UNITED STATES OF AMERICA,
Southern district of Ohio, ss:

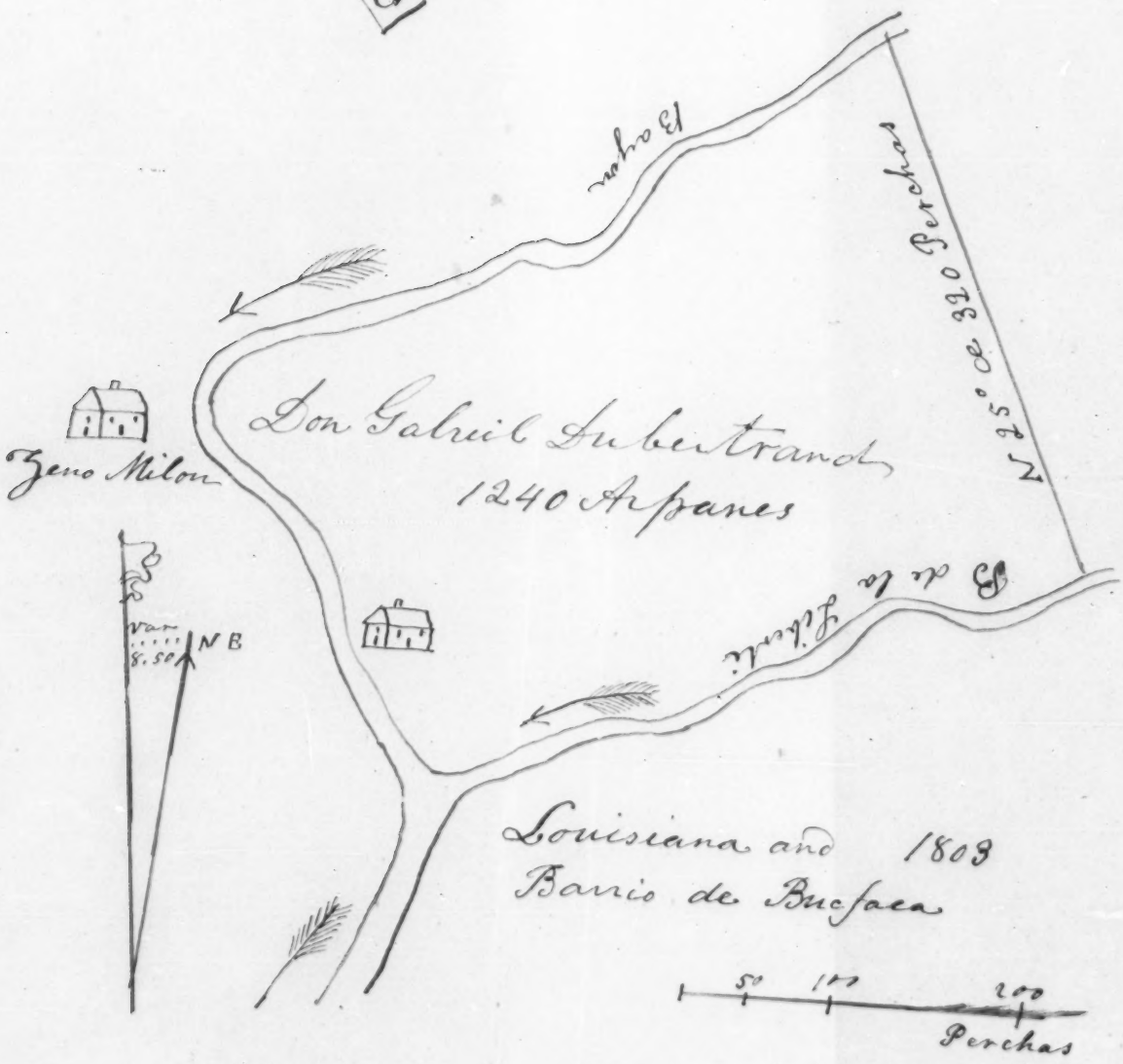
I, William Miner, clerk of the circuit court of the United States, seventh circuit and southern district of Ohio, hereby certify, that the foregoing is a true copy of the plea of the general issue in the case of the United States against The City Bank of Columbus, as the same remains on file in my office.

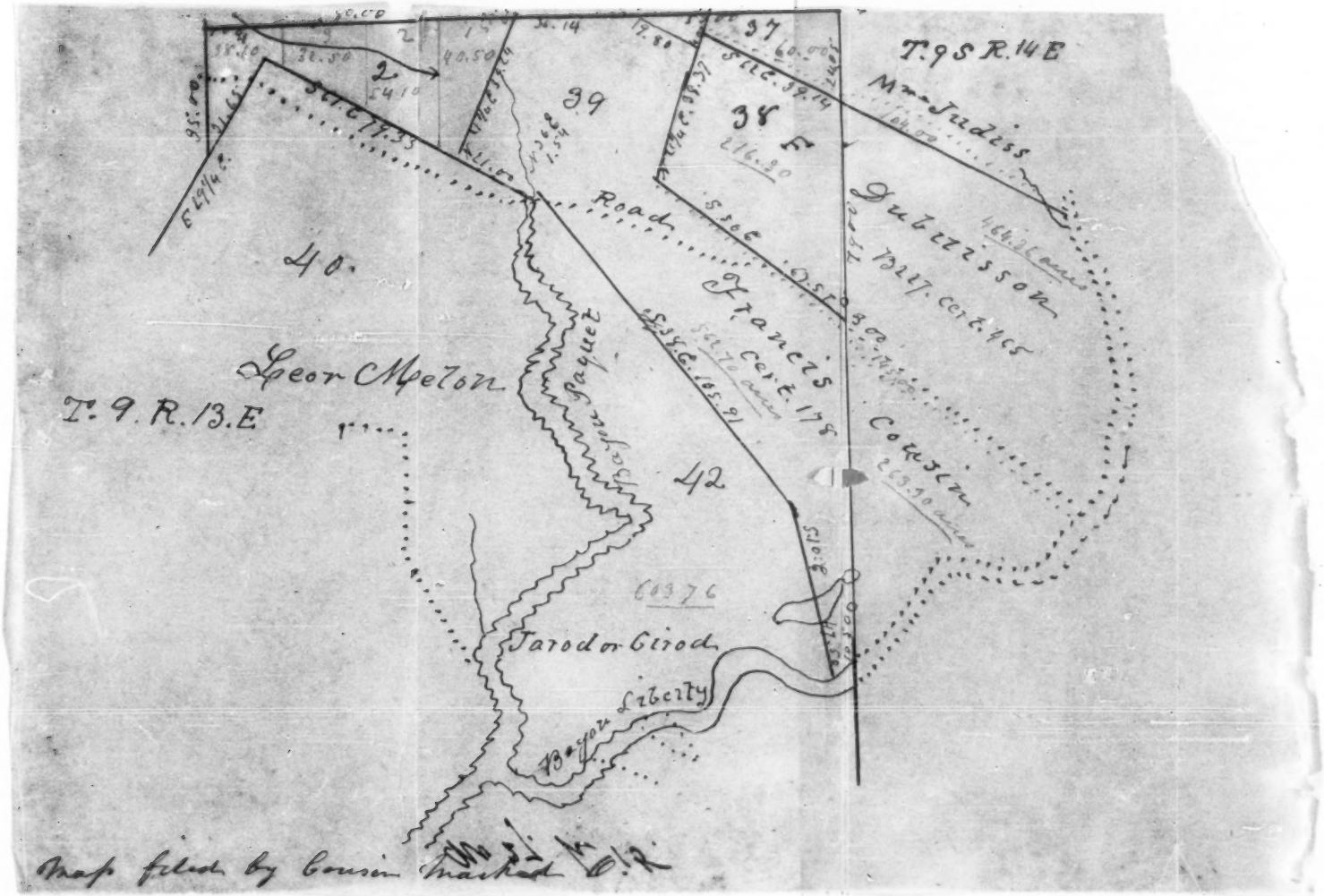
In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 31st day of December, A. D. 1855, [SEAL.] and in the 80th year of the independence of the United States of America.

WM. MINER, *Clerk.*

Plot to Lou. G. Lubertran
Fol. 48. Book No 6. D. No 4. –

No 1283 – Boxe 5.




T.9 S R.14 E
Mrs Judiss
Dulitzsson
Patd. cert. 405
Francis
Cert. 175
Cowsen
Road
39
38 E
37
40.
42
Geor Melon
T. 9. R. 13. E
Jarod or Girod
Liberty
Map filed by Cousin Marked No 2

Township 9. R. 13. East.

T U V W X Y A

J. Carriere

Nicholas Ducras. 26.

Joseph Milon 28

Bayou Lacombe

Sold 9.

Sold

Terence Cousin
Anatole Cousin

Vve Francois Alpuente

Bayou Paquet

Héritiers de Louis Donnet 31

Isadore Galatas 1.

Terence Cousin 11

E. Blano 30.

S R Q B C D E F f

Bayou Liberty

Bayou Bonfouca

Pond

Lake Pontchartrain

137.

T. 9 R 13 E Land District East of the Island of N. Orleans & West of Pearl River

J. Carrier 27

Nicholas de Gras 26

Lacombe

Joseph Milon 28.

Bayou

4.

Leon Milon 12

Zeno Milon 20

Bayou Packett

Francis Cousin 3

Terence Cousin 2

McTudiss 1

Jarod 30

Lake Pontchartrain.

Bayou Bonfaca

Pond

138

N.123 page 79. -

T. 9 R. 13 E. Land District of the Island of New Orleans and West of Pearl River

T U V W X Y A B C D E F G R S r

80.00 80.00 80.00 80.00 80.00 83.58

J. Carier 27 — 27 Nicolas de Gras — 6 — 5 — 4 — 3 — 1-3-1 — 12 Leon Milon — 1-2-8-0 131.80 Lot 2 — 91.00 Lot 1 — 1 Madam Judiss — Terrance Cousin 11 — Francis Cousin 31

Bayou Lacompte — 127 9 — 80.26 — 25 Joseph Milon — 8 Sold — 80.00 — Sold 9. — F.A. — Sold 80.00 — F.A. — 29 Zeno Milon — 30 Jarod

7 — 80.11 — 80.20 — F.A. — 80.08 — 1-2-7-0 — 13 — 14 — 127 — 32 — Bayou Liberty — 13 — 82.00

18 — 127 5 — 80.08 — 17 — 16 — 79.93 — 127 4 19 — 80.07 — 20 — 1-2-7-3 — 80.00 — 21 — 1-2-7-2 — 126 9 — 127 8 — 22 — 23 — Bayou Bonfaca — 24

9 — 139 — Lake Pontchartrain — 25 — pond — 4 — 36

T. 9 R 13 E Greensburg Dist. La.

N. Lucra
B. No. 231
Cert. No. 203

Jacques Carmine
No. 17. Rft. 41821
Cert. 466

Bayou La combe

Bayou Cyprian

James Milon
B. No. 244

Leon Milon
B. No. 230. Cert. 473

Leon Milon
B. No. 229. Cert. No. 474

Road

F. Dubuisson
B. No. 227 Cert. 465

Francis Cousin
Cert. 178

Bayou Paquet

Jarod or Girod

Bayou Liberty

Field

Marsh

Lake Pontchartrain.

Plat of Harpers Survey. The claim of F. Cousin by Thos. B. Harper. September 17th 1851

Corner Tree

Claim by C. Blanc

Dry Bayou

Township 9. Sn 2

Township 39.

Disputed part between Cousin & Le Blanc

acres 161.3. arpents

No 1

No 2

No 3

No 4

No 5

Fr. Dubisson

Road to Covington and Mandeville

Covington Road

Sn 1

40 Leon Melon

Dividing Line between Sections 1 & 2.

Forsythes 42 Mr. C. Blanc

Original boundary

Lines (now) claimed by Le Blanc

Fr. Cousin's Line according to Survey of Hayes 1845

Boundary Line between Cousin and Francis

Line between Cousin and Girod

T. 8 SR 13. E.

Township Line

Range Line

Variation 7°38' East.

Magnetic North

Fine Meridian

a corner Tree marked 3.9. R13. E.

T. 9 R 13 E.

T9. SR. 13 E.

Content of F. Cousins claim as Surveyed by G. Vanzandts acres 382.70 arpents

Contents of Cousins Land according to the present Survey acres 616 arpents 170.

acres No 1 161.3.12
D°. No 2 37.2.06
D°. No 3 619.3.30.
D°. No 4 112.3.19.
D°. No 5 22.2.24

The number of acres contained in each respectively to be deducted from the Sum Total as Cousin will holds only the land contained in Nos 1 & 3

Cert. 165. chs 75-75 Line Dividing Ranges 13 and 14 East.

7

Disputed point between Cousins

F. Debisson

T 9 S R 13 E.

T 9 R 13 E.

Boundary Line between Cousins and Debisson

Dividing Line between Sections 1 & 2

Forty two 42 Mrs C. Blanc

Leon Melon 40

Francis Cousin

Heirs (now) owned by E. Blanc

Content of F. Cousins claim as surveyed by G. de Vaux and its acres 562.70 arpents

Land according to the present Survey R 3 P 86 acres 616 arpents

Marsh Land 4 feet Water here when surveyed

7

Plat of Gillespies Survey

Page 42

V. Judiss

T. 8 s R. 13 E. | T. 8 s R. 14 E.
T 9 s R 13 E | T 9 s R 14 E
09.46 Acres

Bayou Paquet

Mandeville

Road

Railroad

E. Dubisson 177. 25. acres Corby B 227.

Cert. No 465

Francis Cousin

Cert. No 778

Don Gabriel. Dubertrand

1046 54 acres

8

Bayou Paquet

Mandeville

Road

F. Dubisson 111. 25. acres Cert. No 465

Francis Cousin

Ctfc No 778

Don Gabriel Dubertrand 1046 54 acres

Blanks Brickyard

Railroad

Road

Variation 4° 47° E.

Copy of Plan of Gillespie's Survey.

V. Judice

T8S. R13E. | T8S. R14E

T9S. R13E | T9S. R14E

69.46 acres

Bayou Paque

Manderville

Road

F Dubuisson

Crosby

Bzzl

111.21 Acres

Cert. No 465

Francis Cousin

Cert. No 178.

Don Gabriel Dubertrand

1046 54/100 acres

Railroad

Swamp

Bayou Paque

Manderville

F Dubuisson

Gosby

Bzzl

117.21 Acres

Cert. No 465

Francis Cousin

Cert. No 178.

Don Gabriel Dubertrand

1046 54/100 acres

Swamp

Road

Railroad

Blanks Brickyard

Marsh

Variation 7° 4' E

Copy of Plan of Harper's Survey
(Marked T)

Survey of THE CLAIM T. COUSIN.

Township 9. S.n 2.

Township 39 Disputed part between Cousin & Blanc acres 161 R.P. 3 12 arpents

Mr. E Blanc

Forty two 42

Leon Melons 40

Township 9. S.n 1.

Dry Bayou

Road to Covington and Mandeville

Covington

Bearing Tree

the bluffs Surveyors claims

Dividing Line Between Section 1. 02

Lines (now) claimed by F. Cousin according to Survey in 1846

Original Boundary Line between Cousin and Blanc

Boundary Line between Cousin and Dubisson

Francis Cousin

F. Dubisson

Variation 7°38 East

Magnetic Meridian North

T.9.S.R.13.E.

T.9.R.13.E.

Scale Ten chains to One Inch

Magnetic Variation 7°38 East

Content of Cousin's Claim as surveyed by L. E. Vanzandt. acres 362.76 arpents.

Content of Cousin's Land according to the present Survey R.P.

acres		
D°	No 1	161.3.12
D°	No 2.	87.2.06
D°	No 3.	619.3.30
D°	No 4.	112.8.14
D°	No 5.	22.2.61

+ No 2 & 4 The Number of acres contained in Each respectively to be Deducted from the sum total as Cousin now holds only the land contained in N.S 1. to 3.

SWAMP 8 Feet Water

Marsh 4 feet water where not surveyed

Marsh Land 4 feet water where not surveyed

Bayou Liberty

10

Map of the Beach and Water Lots of San Francisco

A.D. 1847

Scale 100 2 3 4 5 600 Varas or 550 Yards

Soundings in English feet at low water.

Montgomery
Green
Vallejo
Broadway
Pacific
Jackson
Washington
Portsmouth Square
Sacramento
California
Pine
Bush
Sutter
Battery
Front
Gov.mt Reserve
Gov.mt Reserve
Kearny
Clay
Commercial
Leidesdorff
Merchant
Halleck
Sansome
Battery
Front
Davis
Pacific
Jackson
Washington
Jackson
Sacramento
Clay
Commercial

Portsmouth Square

Washington

Sacramento

California

Pine

Bush

Sutter

Market

Battery

Front

Davis

Sansome

Leidesdorff

Kearny

Montgomery

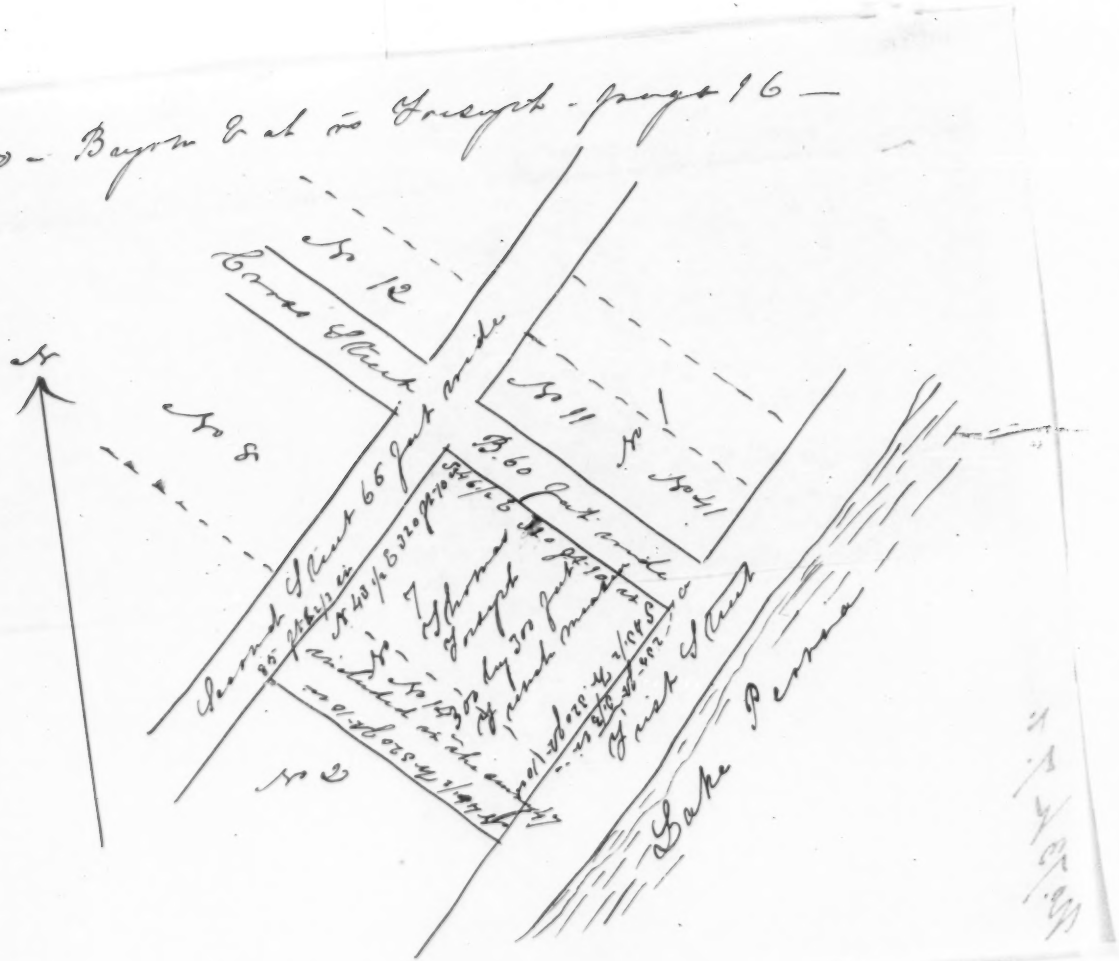
Rincon Point

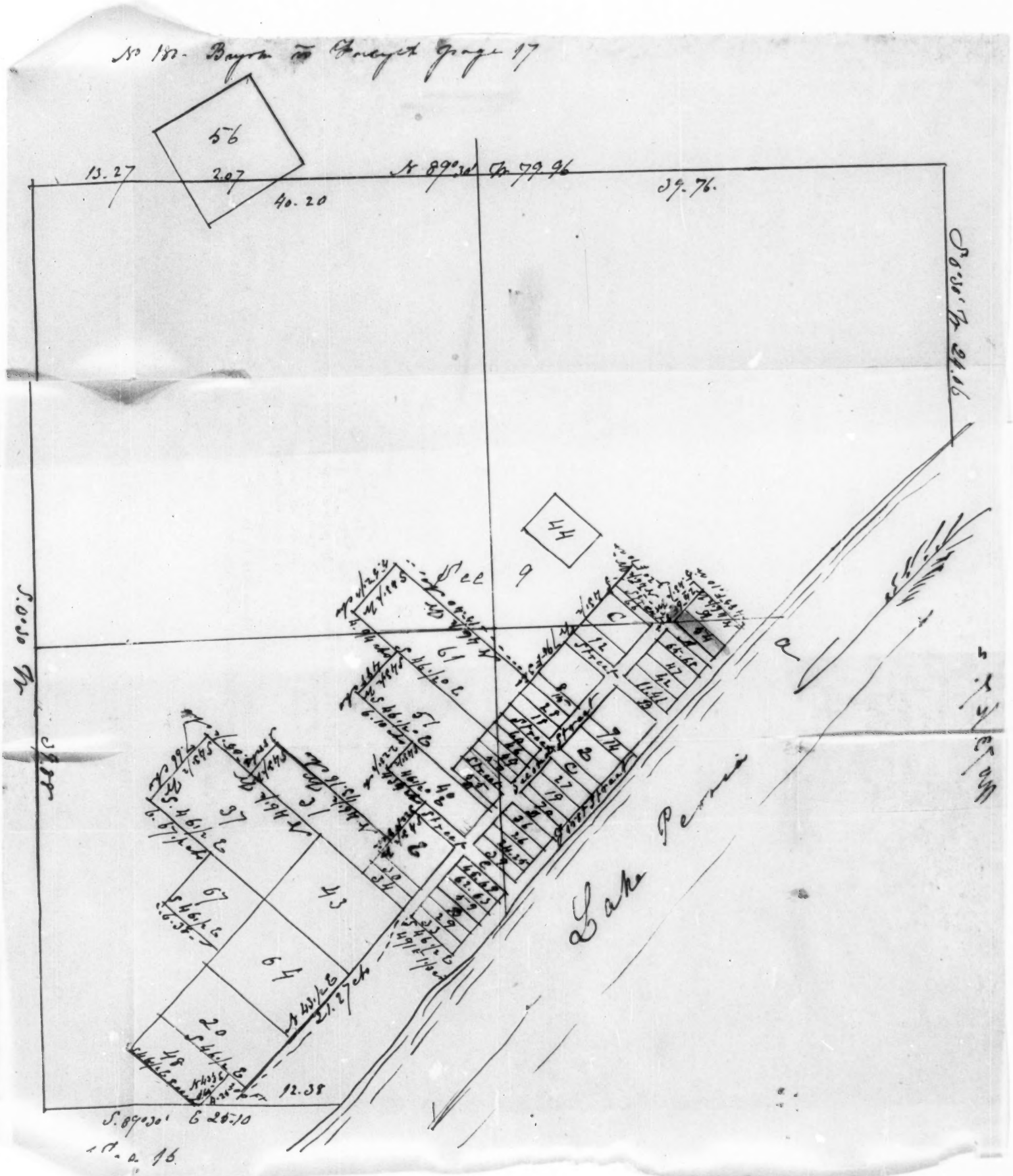
Govmt Reserve

Beach

Surveyed by Jasper O'Farrell C.E.
San Francisco July 16th/47
M. Hall McAllister
Judge

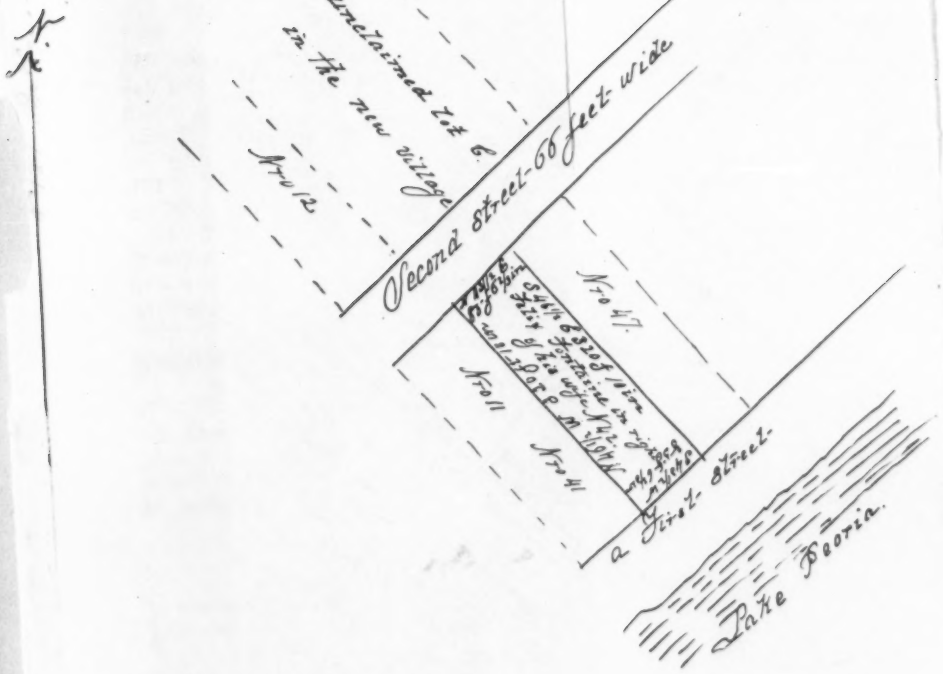
16. No 180 — Bayou & ch to Sycamore - page 16 —

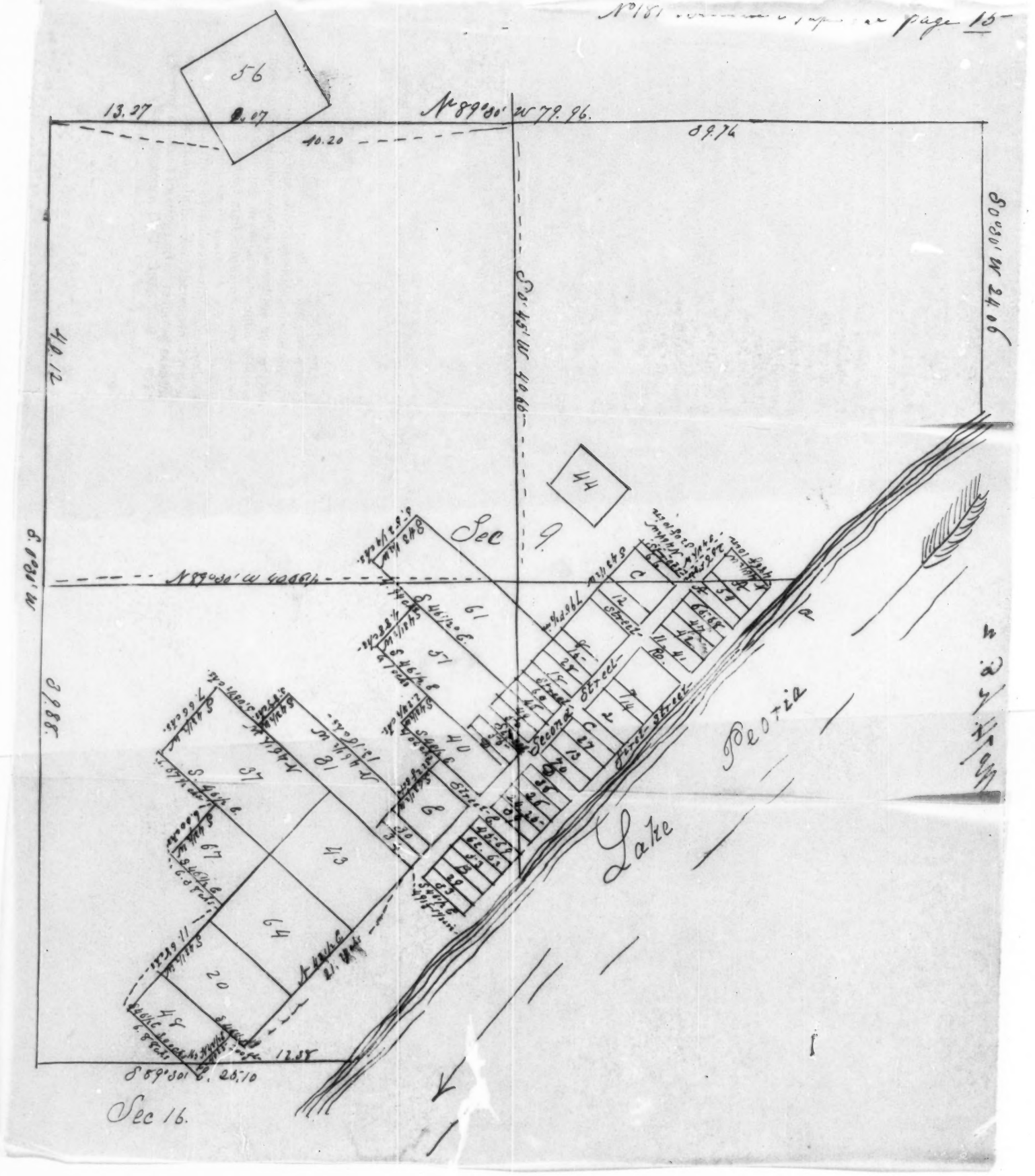



No 181. Bayou to Brodnax Grange 17
56
13.27
2.07
40.20
N 89°30' W 79.96
39.76
S.0°30' E 24.16
S.0°30' W
44
9
Lake Pend
S.89°30' E 28.10
N. a. 16

No 181 Ballance to Papin pa: 14.

" 74. p. 8. 1.




56
13.27
2.07
N 89°30' W 79.96.
10.20
89.74
S 0°30' W 24.06
40.12
S 0°30' W 39.88
Sec 9
44
61
57
40
18
37
67
64
20
43
6
Second Street
First Street
Peoria
Lake
S 89°30' E. 26.10
Sec 16.

EDWIN M. CHAFFEE,

APPLICATION OF CAOUTCHOUC TO CLOTH.

Patented 31st Aug. 1836.

Fig 1.

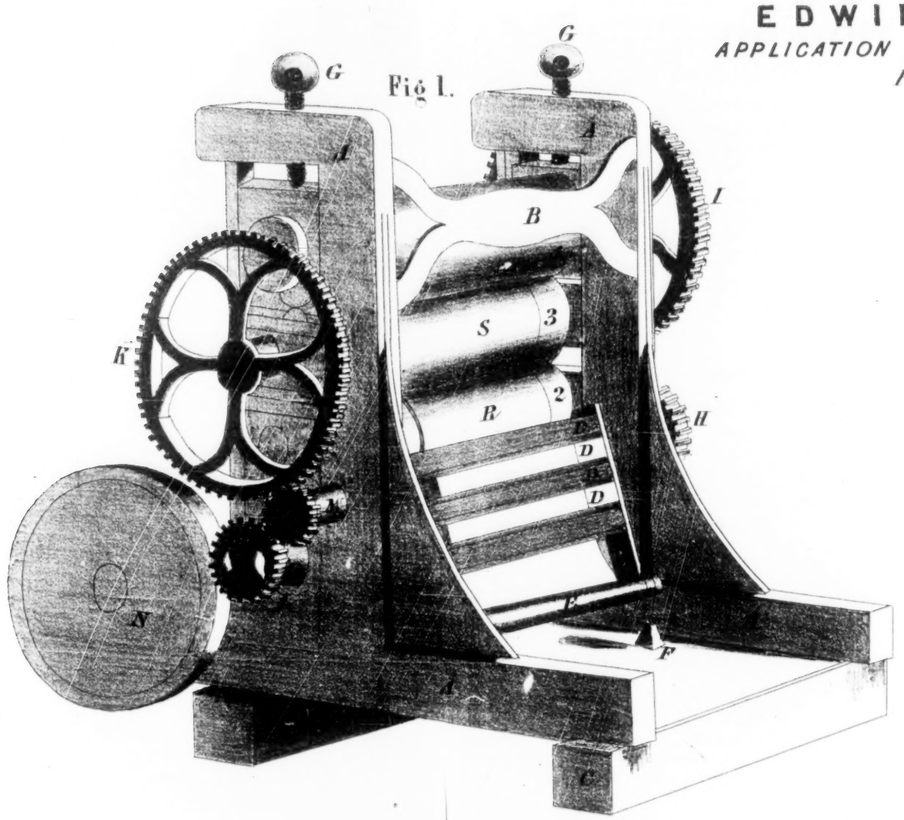


Fig 3.

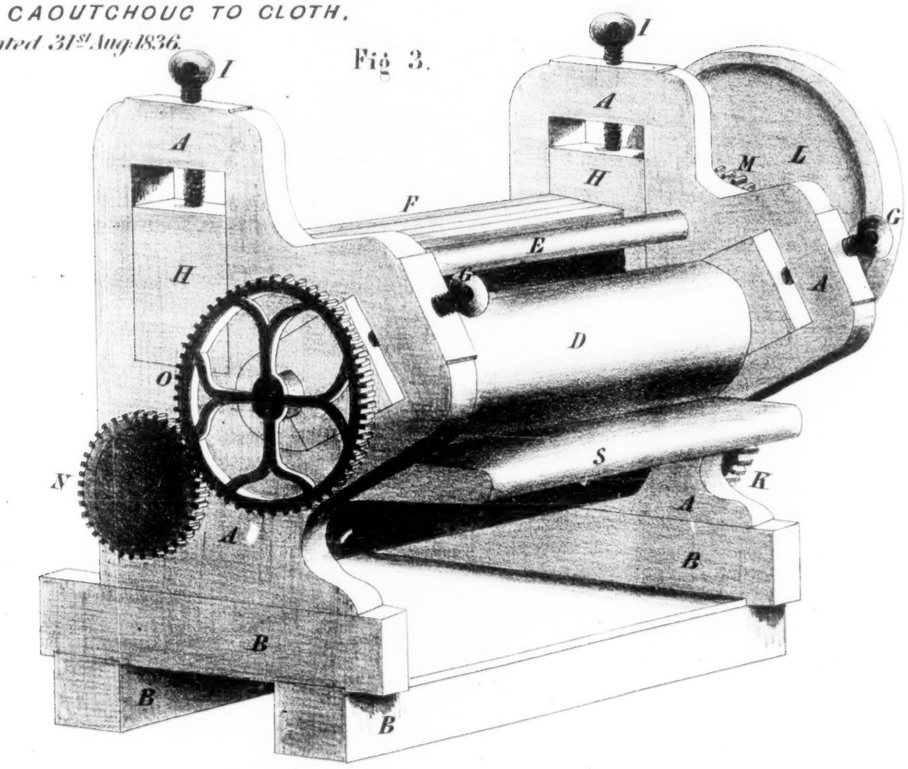


Fig 2.

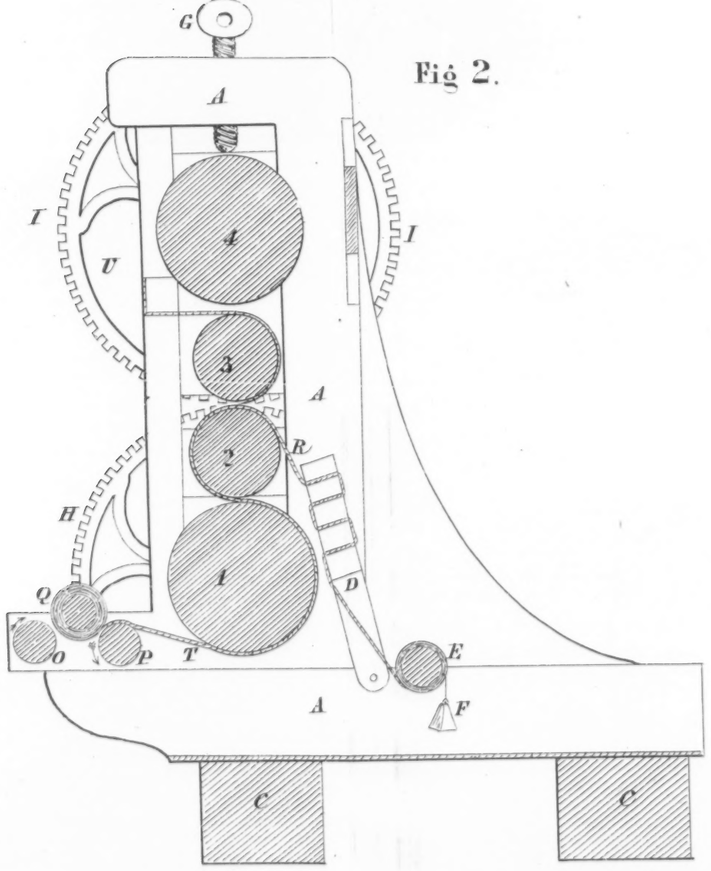
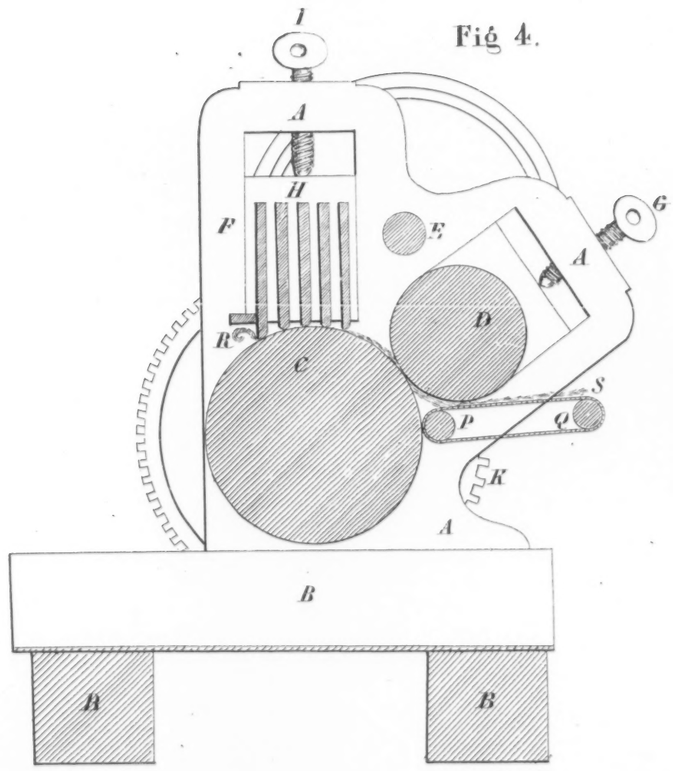
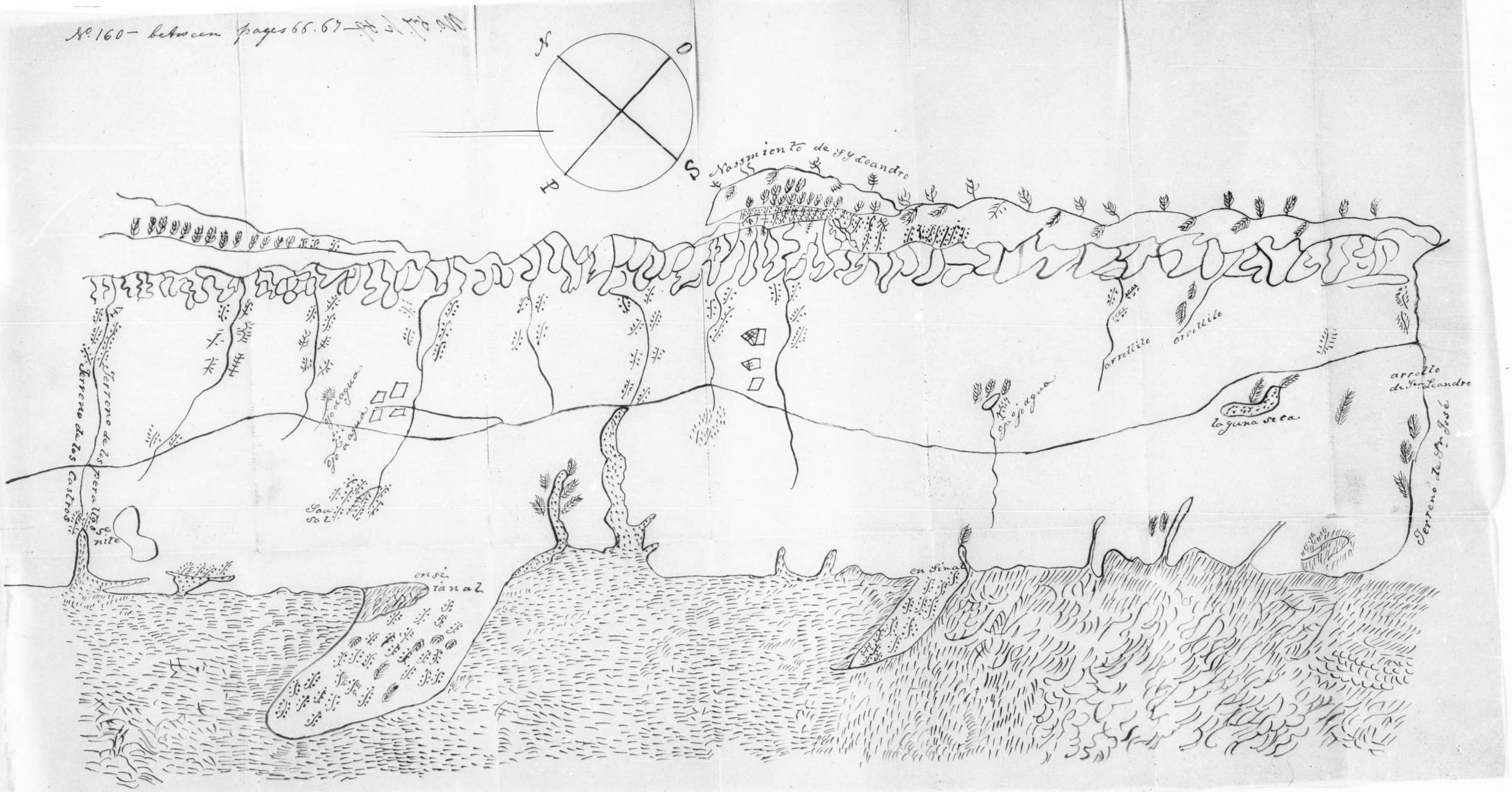


Fig 4.



Nº 160 – between pages 66. 67 –



No. 180. U States vs Peralta page 127

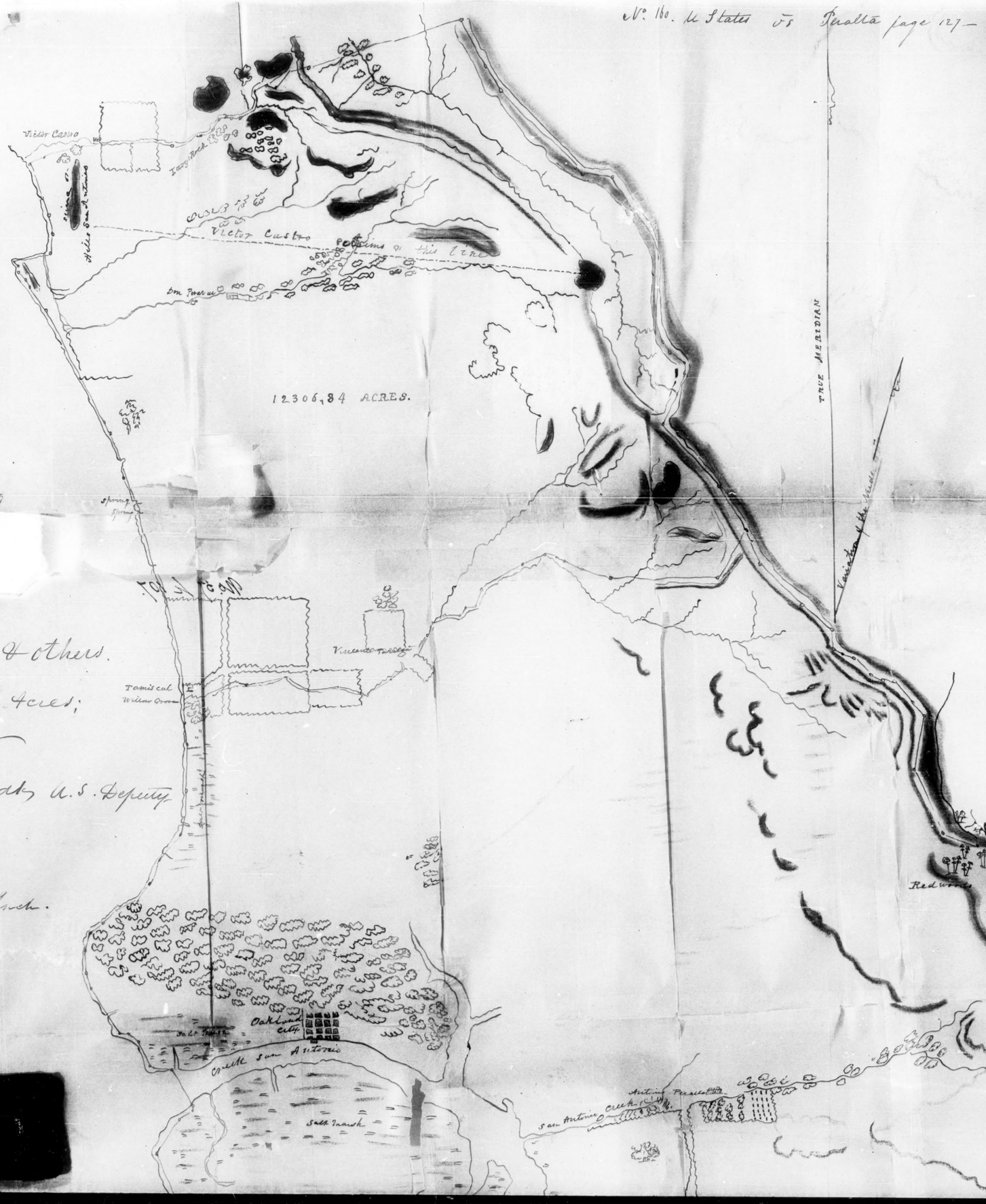
Plan of Rancho: Ex-San-Antonio claimed by Vincente Peralta & others.

Containing - 44 66.76. Acres;

Surveyed by

H. W. Von-Schmidt, U.S. Deputy Surveyor.

Scale 40 chains to the Inch.



18

No. 160. U States vs Peralta page 127—

Victor Castro

Victor Castro

Points on this line

Don Tomas

12306,84 ACRES.

TRUE MERIDIAN

Variation of the Needle

Spring

Vincente Pasage

Damiscal Willow Grove

Oakland City

Salt Marsh

Creek San Antonio

San Antonio Creek

Redwoods

...ntonio

...by

...alta & others.

...38.76. Acres;

...e by

...Schmidt, U.S. Deputy

...t.

...the Inch.

Rancho

De San Antonio

Claimed by

Vincente Peralta & others.

Containing 4400.76 Acres;

Surveyed by

H. W. Von Schmidt, U.S. Deputy

Surveyor.

Scale 40 chains to the Inch.

18

Copy from the original on file in this office
San Francisco Cal
Oct. 16th 1852
Surv. Gent Office

S. H. King
Surv. Gent.

12306.84 ACRES.

& others.

. 4cres;

ids U.S. Deputy

Inch.

Vincente Rancho

Tamiscal

Willow Grove

Oakland

Redwoods

Salt Marsh

Creek San Antonio

San Antonio Creek

Antonio Peralta

Salt Marsh

Sandy Point

Salt marsh

Salt marsh

Ygnacio Peralta

Creek

Rancho

Copy. from the original on file in this office.
San Francisco Cal
Oct. 16th. 1852
Surv. Gent Office

L. H. King
Surv. Gent.

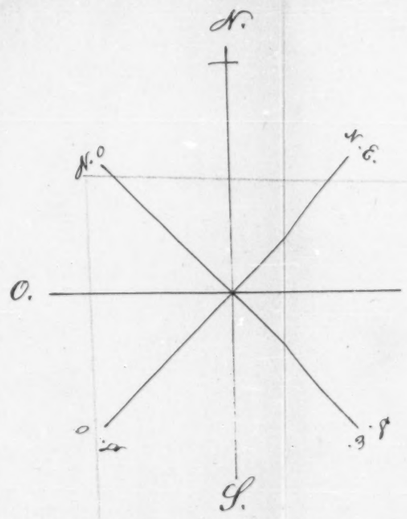
18

2.

Deseño
del
Rancho ocupado por
Sor Dn. Francisco Castro y
llamado San Pablo.

1000 2000 3000 4000 5000

Escala de 5000 Varras –



Bahia de
S. Pablo.

Pinole ó rancho
del Sor. Martines

Lomaris

Sierras

P. S. Pablo

Casa

Posilas
de aguas

Isla

Lomas de
S. Antº

Isla

Bahia de S. Franco

San Antonio ó rancho del
Sor Dn. Luis Peralta.

RANCHO DE SAN PABLO

SAN PABLO

ARROYO DEL TEMASCAL Y LOS JUNITAS

DERRITA SAN PABLO

ZONA DEL TEMASCAL

ENCINAL DE TEMASCAL

SALDAL

PUNTA DE SAN PABLO

NACIMIENTO DEL ARROYO DE SAN LEANDRO

ARROYO SAN LEANDRO

SAN JOSE

LAGUNA SECA

RANCHO SAN ANTONIO

LIMITES SAN ANTONIO

BAHIA DE SAN ANTONIO

ENCINAL DE SAN ANTONIO

Estero de San Leandro

BAY of SAN FRANCISCO

Exhibit No. 1. U. S. -6.

Nacimiento del Arroyo de San Leandro

Arroyo de San Leandro

Arroyo del Temescal

Arroyo de los Sembradores

Cerro de San Pablo

Temescal

Rancho San Antonio

Rancho San Jose

Laguna Seca

Bahia de San Antonio

Encinal de San Antonio

Estero de San Leandro

B A Y of S A N F R A N. co

No 160. U. States vs Peralta -

between pages 222 & 223